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NO. _____

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF LOUISIANA,

Petitioner,

versus

CHARLES F. WALGAMOTTE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI FOR THE STATE OF LOUISIANA

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

BARBARA RUTLEDGE
ASSISTANT ATTORNEY GENERAL
STATE OF LOUISIANA

HARRY L. MOREL, JR.
DISTRICT ATTORNEY
29th JUDICIAL DISTRICT
STATE OF LOUISIANA

ABBOTT J. REEVES
ASSISTANT DISTRICT ATTORNEY
RESEARCH AND APPEALS
P. O. BOX 466
419 DERBIGNY STREET
GRETNA, LOUISIANA 70054
TELEPHONE: (504) 367-1212

QUESTIONS PRESENTED

Whether the Louisiana Code of Criminal Procedure Article 579(2) is unconstitutional on its face for vagueness and overbreadth.

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STATE OF LOUISIANA,

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On Petition for a Writ of Certiorari to
The Supreme Court of the State of Louisiana

BRIEF FOR THE STATE OF LOUISIANA PETITIONER

OPINION BELOW

The opinion of the Supreme Court of Louisiana is reported as *State of Louisiana v. Walgamotte*, 415 So.2d 205 (1982), Rehearing denied and is set out in Appendix B of the petitioner's brief at page A-7.

The Louisiana Supreme Court stayed dismissal of this prosecution until September 4, 1982.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner questions the constitutionality of Louisiana Code of Criminal Procedure Articles 578 and 579(2) for reasons of vagueness and overbreadth which, as it now stands, deprives the state from knowing with any certainty whether or not a defendant has been denied due process as to a reasonable time period in which to commence trial after institution of prosecution.

This case also involves the Fifth, Sixth, Tenth, and Fourteenth Amendments to the Constitution of the United States of America.

STATEMENT OF THE CASE

The autopsy of the armed robbery - murder victim, Mrs. Rita V. Vicknair, age 48, revealed she had died from multiple (22) stab wounds and stangulation.

On July 9, 1973 Charles F. Walgamotte, 15 years of age and his brother, Frank F. Walgamotte age 19 years old, entered White's Auto Store on Central Avenue in Reserve, Parish of St. John the Baptist, Louisiana, which store was operated by Mrs. Rita V. Vicknair and her husband, Donald A. Vicknair. Because Walgamotte and his brother were acting rather suspiciously, they were told by Mrs. Vicknair that if they did not want to buy anything it would be best for them to leave the store. They thereupon left the building.

Shortly thereafter Mr. Donald A. Vicknair went on a mission to Laplace, Louisiana leaving his wife alone in the store. The two brothers returned to the store while Mrs. Rita V. Vicknair was alone. They had armed themselves with a knife. They robbed and killed her.

The following is a confession of the older brother, Frank Walgamotte, as to what actually transpired in the store.

(Frank Walgamotte entered a guilty plea to second degree murder and was sentenced to life imprisonment at hard labor without benefit of parole, probations or suspension of sentence for twenty years).

I, Frank Ford Walgamotte and CHARLES F. WALGAMOTTE, got up at approximately 6:00 P.M., ate and then after that decided to go look for a job. We went on West 5th Street. From there, we started hitchking. We could not get a ride, so we walked a pretty long ways. Then we got up to the turn. We caught a ride with a colored man. From there we went 1-mile to Reserve, then we got off, then we walked 21-blocks to Central Avenue. From there, we walked down to White's Auto Shop, and we browsed around then we decided there was nothing here, so we left; went to the gas station across the street. From there, we had some water then went back to the store, talked to the man, and the man asked me a few questions. For instance, he asked me what was my name. I told him, Frank Myers. He asked me if I lived around here. I live on East 7th Street in Reserve, La. Then we went back looking around. From there we went outside, sat down, 98 °very hot. We decided to go back into the store where they had a nice air condition, talk and look around more. From there we come back out once again. I talked to my brother CHARLES WALGAMOTTE about there was nothing here so what would you like to do? He said. well, maybe we should try to get some guns. I agreed, so then, at approximately 8:30 or 25 to 9,we

decided to go one more time into the store. Looked around, then we left.

We went up to the grocery store, Red & White, to get a knife. We went in, got the knife and come back out. From there we went down. While we were walking, we were discussing what we might, what we should do. We decided to take the knife, put it up to the lady's throat and hold her as a hostage if the man was in the store. If he wasn't, we were going to use the lady as just a hostage in case somebody came into the store. From there we went back. We made it to the store. We waited around 9:00. Then we went back. The lady said, you have nothing better to do except browse around; I said, is it against the law to look? She said, well, it'll be better if you leave. So we left and went back outside. Went back to the gas station; got some more water. Then we sat down. Then the gentleman came out the store, and he drove off so we went back in the store. We put the knife to her throat, then we told her to go in her house. She went in. Then my brother come out, he took the guns, bullets and then he put them in a neat little pile where no one would see, then we back. By that time, I was choking the lady. Then from there, he (my brother, CHARLES) said, maybe I should take a wire or something, so he did. He (CHARLES WALGAMOTTE) put it around her neck and he (CHARLES WALGAMOTTE) choked her more. Then I went out and I grabbed the money while he was watching the lady. Then, I had the money in my pocket, we had the guns. Then we both in there together, then I

took the knife that I had bought, and then I stabbed her and stabbed her until she was dead, using the scissors too. Then from there we left. Then a gentleman, a colored man, came in, into the store. He asked us, he says, "What are you doing? Is there someone watching us or someone to take care of me"? I said, I was minding the store.

He said, ok. I'm looking at these fishing lines. From there we took the bag, my brother (CHARLES WALGAMOTTE) had the guns and the money, took the keys out the lady's pocket book, went outside, got in the car and drove off.

We drove on Central Avenue straight towards the end of highway.From there, they had a train passing so we backed up and went the other way. Throwing away any suspicion at us, we went back on the highway. We went down the River road, threw away the knife, the scissors out of the window. We came upon a funeral. We sat there and waited until the funeral passed and we drove all the way toward the interstate going to New Orleans. We stopped at a red light. They had one Police Officer standing, getting out of his car, he went around the back of us, and stood there watching the highway going to New Orleans. We passed him up. We went straight. Then we went to the city, all the way. I went to my sister's house, Sharon Demark. We talked to her and gave her some of the stolen money that I had owed her. My brother felt sick. Then from there we left. We went to a picture

show after that. Stayed there, spent mostly all of the money. Spent all of the money, just about. From there we went to Congress Street around 8:30 that night. I had a telephone call that was to my aunt's house. So, I decided to call her. I called her. My mother advised me to come out to LaPlace, so they had four plain clothes and two-cars pulled up on Congress. I had a notion that they might have been looking for us by now. So, I went out the back way, climbed a fence, jumped over three fences; went out and started walking not rousing any suspicion.

I told my brother (CHARLES WALGAMOTTE) I did not see him coming behind me. I went straight, caught a ride by hitchhiking on the Avenue. It was very hard to catch a ride, but I caught one ride going to Canal, and from there, caught another one going to the highway, Jefferson highway. Then I caught one that brought me all the way to the airport. By now, it was getting late, 10:00 P.M. somewhere around that. I didn't hear nothing from my brother, no word that he made it or if he didn't. From there, I went to my mother's. I arrived there approximately 11:00 or 12:00 P. M. I talked to my mother; I decided to give myself up, and give a statement.

So, about 8:30 the next morning they came over looking for my brother. My mother went out and told them that I was inside and I was coming. I came out, they checked me, I went into the car; drove over here to the station. In there, they asked me a few ques-

tions about what happened, and I told them the story.

This is the End of the Statement? Answer: Yes. The time is now: 1:17 P.M.

Any questions you want to ask Roy? *Answer:* Yes.

1. *Question:* As you mentioned, before you choked the lady, did she say anything to you? Answer: Yes, she said, "Don't Kill". How many times did she say that to you? Answer: Twice, three times of the most.

2. *Question:* You said you went back into the room? What reason would you give to go back into the room and check if you had choked her until she had fallen on the floor? Answer: Well, since she identified us, we once lived in Reserve, we decided that the only way that would bring them from looking for us would be if we'd kill her.

3. *Lieut. Johnson: Question:* You both decided this? *Answer:* Yes.

4. *Detective Nicholson: Question:* What reason would you give for stabbing her so many times and choking her and tying a cord around her neck? Wouldn't it be more appropriate to tie it around her hand to keep her from moving, around her leg to keep her from moving; not around her neck? *Answer:* Well, she was in an unconscious state already when I started putting the knife in her flesh.

5. *Question:* Where did you pick up the scissors from?

Answer: I seen the scissors so I used them on her arm.

6. *Question:* Why? *Answer:* Thought that it would work a lot better.

Nicholson: Was she moving when you were stabbing her? Making any motion or anything?

Frank Walgamotte: No motions.

Nicholson: What happened to the money? How much money did you'll take?

Frank Walgamotte: Approximately $200.00.

Nicholson: Where did most of it pass? How did you all split it up?

Frank Walgamotte: We split up 50 - 50.

Johnson: Now I don't believe it when you left the car on the road. What did you do with the car?

Frank Walgamotte: We took the car. Wanted to put it down and don't use it. We took it to about a middle of a white/colored neighborhood. We sat it down. Wiped it out clean. Wiped the guns, wiped everything. Then we left it.

Nicholson: Did your mother at any time

advise you to turn yourself in? Or that was your own decision?

Frank Walgamotte: It was my own decision. When we started discussing and I read in the newspaper this morning about the crime, I decided if I turn myself in, I won't commit any more crimes and have myself deeper involved.

Nicholson: Would that be the reason why you abandoned the car with - - -?

Walgamotte: Repeat that please?

Nicholson: Would that be the reason for you abandoning the car . . .

Walgamotte: Yes.

Nicholson: . . .with the gun?

Walgamotte: Yes, that was the reason.

Johnson: What was the main object in robbing the store? Was it for the money or the gun?

Walgamotte: My point of view is for the money. My brother's (CHARLES WALGAMOTTE) was the guns. And partial to the money, too.

Johnson: What did they intend to do with the guns?

Walgamotte: I guess he would probably preform some type of tatic like we have here now.

Johnson: Like what?

Walgamotte: Of Committing the nurder to this woman.

7. *Question:* There were a lot of guns laying around, he could have shot her, before he even started stabbing her, you know, took her to the room at knife point, there was one weapon laying in the bed that wasn't touched or moved.

Answer: We did not notice the weapon. We just focus it on the woman.

8. *Question:* Did she give any kind of resistar or anything besides begging and all?

Answer: None at all.

9. *Lieut. Johnson: Question:* She did offer you any money or anything if you'd let her go or anything like that?

Answer: Nothing, just "Don't kill".

10. *Question:* What was your reason from not taking more guns or more merchandise out of the store than what you'll took?

Answer: Well, we needed what we wanted and could hold out if we were going to plan another job we wouldn't need any unnecessary weapons just what we could carry.

11. *Question:* This was the 1st job you'll ever plan or pulled off? Or you all tried this before?

Answer: We never tried this before.

END OF STATEMENT.

While Mr. Donald A. Vicknair was still away a Mr. Earl Johnson of Mt. Airy, Louisiana entered the store for the purpose of purchasing some articles. He saw the younger of the two defendants putting articles in a paper bag and going to the cash register from which most of the money was removed. He then saw the two defendants hurriedly leave in an automobile belonging to Mrs. Rita V. Vicknair. He followed the car for a while and then returned to White's Auto Store and informed Mr. Dan Beadle, a neighbor, of what he had seen.

Mr. Beadle immediately entered the business section of the store and not seeing anyone went to the residence part of the building where he found Mrs. Rita V. Vicknair on the bedroom floor with numerous stab wounds in her body. Upon the arrival of a doctor she was pronounced dead.

The two brothers were subsequently apprehended, arrested and charged accordingly.

As indicated above, Frank Walgamotte, age 19, pleaded guilty and was sentenced to life imprisonment.

The prosecution of Charles Walgamotte for his part in the crime of first degree murder was properly instituted by grand jury indictment, signed a "true bill" on August 17, 1973. The history of that prosecution reveals that defendant pled guilty to second degree murder in the district court for the parish of St. John the Baptist on May 31, 1974 with the consent of the district attorney. There was no formal amendment of the 1973 indictment. When the district judge vacated the defendant's guilty plea to second degree murder after the hearing held on April 14, 1975, the 1973 indictment was

still outstanding and formed the basis for the trial judge's remanding Walgamotte to the St. John the Baptist Parish prison on that day to await trial for first degree murder.

There followed numerous interrupting legal skirmishes.

Charles Walgamotte was set to tried by jury in April 1981 but at that time filed a Motion to Quash based on the allegation the trial must begin within three years of the date of the institution of the prosecution.

The Louisiana Supreme Court has held the interruptions ended April 1979, therefore the 1981 trial date was 2 years too late. The State now seeks a review of this ruling. *State v. Walgamotte*, 415 So. 2d 205 (1982) (Rehearing denied July 2, 1982.

REASONS FOR GRANTING THE WRIT

LOUISIANA CODE OF CRIMINAL PROCEDURE, TITLE 17, ARTICLE 579(2) IS UNCONSTITUTIONAL FOR REASONS OF VAGUENESS AND OVERBREADTH

In its entirety, La.C.Cr.P. Art. 579 reads:

> "Art. 579. Interruption of time limitation
>
> The period of limitation established by Article 578 shall be interrupted if:
>
> (1) The defendant at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state; or
>
> (2) The defendant cannot be tried because of insanity or because his presence for trial cannot be obtained by legal process, or for any other cause beyond the control of the state.
>
> The periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists."

The challenged section is (2), more particularly, the phrase:

> "* * * or for any other cause beyond the control of the state. . ."

This article provides expresly for an *interruption* rather

than for a suspension of prescription, otherwise known as limitations as to time in which to commence a trial after institution of prosecution. Interruption is generally meant to allow complete halt to tolling of time and revert to counting from day one all over again.

See now C.Cr.P. Art. 578 which provides, in the instant case, that commencement of trial may begin within three years from date of institution of the prosecution. Specifically, the statute reads, in pertinent parts:

> "Art. 578. General rule
>
> Except as otherwise provided in this Chapter, no trial shall be commenced:
>
> (1) In capital cases after three years from the date of institution of the prosecution; . . ."

Note that this writ application is addressed to that phrase "except as otherwise provided in this chapter . . ." which is found in C.Cr.P. Art. 579(2) allowing for interruption when delay for commencement of the trial is "beyond the control of the state."

Petitioner, the State of Louisiana, through the office of District Attorney, alleges herein the Louisiana Supreme Court erred by interpreting the actions and circumstances which delayed the trial in the instant case as not being beyond the control of the state. The fact is the Louisiana Supreme court arbitrarily and capriciously labeled the circumstances not beyond the control of the state when, in fact, no one really knows what the phrase "beyond the control of the state" really means.

The criterion is not based on an "unnecessary delay" as in Federal Rules of Criminal Procedure, Rule 48(b). Rather the criterion employed by the Louisiana Supreme Court was the vague and overbroad phrase "beyond the control of the state."

The phrase "beyond the control of the state" is void for vagueness because the due process standard in giving sufficient warning that an individual responsible may conform his conduct so as to avoid that which is forbidden has not been met. Clearly this Court has held that some statutes will have some inherent vagueness, for "in most English words and phrases there lurk uncertainties," *Robinson v. U.S.*, 324 U.S. 282, 286, 89 L.Ed. 944, 54 S. Ct. 666 (1945), but here even trained lawyers, particularly District Attorneys and Assistant District Attorneys, even after consulting legal dictionaries, treatises, and judicial opinions, cannot identify just what "beyond the control of the state" means. For example, in *State v. DeVito*, 391 So.2d 813 (1980), the District Attorney's office had made every effort to bring the defendant to trial, but because of the State of New Jersey's refusal to release the defendant from the State Prison in Trenton to stand trial, despite compliance with all extradition procedures, the Louisiana Supreme Court held the statute of limitations on commencement of trial had run. Such myopic insistence upon expeditousness in face of a statute which does not delineate on what grounds a delay is necessary or justifiable renders the interruption allowance an empty formality.

The state is at a loss of meeting its burden that the prosecution should not be dismissed when it has to answer such a meaningless phrase like "beyond the control of the state." In one sense, nothing is beyond the control of the state. The state can assert its omnipotent authority to make almost anything happen. On the other hand, what is beyond the

control of the state agency of the office of District Attorney may not be beyond the control of the judges, the Department of Corrections, the Clerk's Office, the police department, etc.

Every District Attorney or Assistant District Attorney is free to create his own standards in each case, based on personal predilections to determine whether it is beyond his control to commence trial under the existing statute. Judgment is based on highly subjective standards and could easily differ from another lawyer's judgment.

Absent more particularized actions, the state cannot make a determination which set of circumstances or which actions or by whom it can be held responsible for any delay to commence a trial under the expression "beyond the control of the state."

The Louisiana Supreme Court could not judge the State as delaying the commencement of trial to the extent of denying the defendant due process under the existing statute.

Petitioner alleges that not only is the statute La.C.Cr.P. Art. 579(2) unconstitutionally vague, as applied in the instant case, but that it is also unconstitutionally vague on its face.

Petitioner states the highly subjective application and interpretation of what is "beyond the control of the state," further denies both parties, the State *and* defendant, of administering *and* receiving justice. *U.S. v. Marion*, 404 U.S. 307, 92 S. Ct. 455, 30 L.Ed.2d 468 (1971). While the statutes of limitations are the primary guarantees against inordinate delays between accusation and trial, *U.S. v. Ewell*, 383 U.S. 116, 86 S. Ct. 773, 15 L.Ed.2d 627 (1966), such a vague "loophole" as the conditioned precedent phrase "beyond the control of the state" denies due process. There

are simply too many different interpretations by simply too many different departments in the state to assure definiteness and certainty on just what the expression means to make it meaningful.

Those interpreting legal skirmishes to either delay or expedite the commencement of a trial are hard put to say just what is the scope of the expression "beyond the control of the state" as a reason for interruption of the running of the statute of limitations. The Louisiana Supreme Court said the State did not meet its burden of proving that it was beyond its control to try the defendant within the statutory delays. *State v. Walgamotte*, 415 So.2d 205 at 211 (1982). However, the court erred in this judgment inasmuch as at another time it could say the State did meet its burden based on similar circumstances. The fact is there is nothing beyond the control of the state that could not, or rather, should not be allowed to deprive a defendant of a speedy trial, or at least a trial within the three-year time period. Yet, time and again, the courts have, *ex propio motu*, lent their own arbitrary interpretation to the meaning of the expression "beyond the control of the state."

The statute is clearly too broad in its expression to be understood. It states "beyond the control of the state" -- such a sweeping phrase only insures an improper application. Such a facially overbroad statute does not regulate the statute of limitations.

Lawyers and non-lawyers alike cannot understand what is "beyond the control of the state," except those actions that are narrowly defined with a definiteness and certainty that does not exist in this statute. The grave danger of smothering C.Cr.P. Art. 578, which limits commencement of a trial within three years with the arbitrary discussion of what is or what is not beyond the control of the state, should

understandably deprive both the state and the defendant of knowing just what their legal rights are. To so broadly allow the phrase "beyond the control of the state" without a narrow definition of what agencies of the state are responsible, or what actions are beyond control, reduces the three-year limit to a meaningless time period that cannot be enforced.

The petitioner submits there is no limiting construction that has been or could be placed on this challenged statute.

Clarity must exist, not only as discussed in the vagueness problem above, but also in the scope of application of the statute. *Plummer v. Columbus*, 414 U.S. 2 (1973); *Palmer v. Euclid*, 402 U.S. 544, 545 (1971).

With respect to C.Cr.P. Art. 579(2), it is possible that a similar statute could have been drafted so as to cure its overbreadth. The caption of statute states "Interruption of time limitation," but the body of the provision is not at all specific as to what acts can interrupt time limitations. The statute, on its face, applies to both state and defendant alike. There is, however, an indication that the overbreadth was not intended by the legislature.

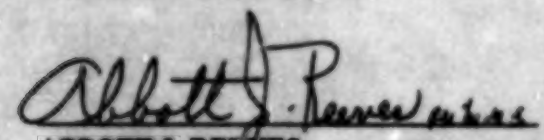
In writing the statute, the legislature made it too broad and, therefore, unconstitutional, because the statute does not present a narrow enough statement to define what exactly is "for any other cause beyond the control of the state."

CONCLUSION

The present case presents the compelling, as of yet unresolved, constitutional question of whether, and under what circumstances, a state trial court must determine what was "beyond the control of the state" to otherwise timely prosecute a criminal case. This question has been left open for many years by this Court and the administration of justice would benefit from a final resolution of this question. The decision below conflicts with the rationale of prior decisions of this Court, the vast majority of jurisdictions which have decided the question and ever past decisions by the Louisiana Supreme Court. For all the reasons stated above, a writ of certiorari should issue to review the opinion of the Supreme Court of Louisiana.

Respectfully submitted,

HARRY L. MOREL, JR.
DISTRICT ATTORNEY
PARISH OF ST. CHARLES



ABBOTT J. REEVES
ASSISTANT DISTRICT ATTORNEY
PARISH OF ST. CHARLES
419 Derbigny Street
P.O. Box 465
Gretna, Louisiana 70054
Phone: 504-367-1212

CERTIFICATE OF SERVICE

I, ABBOTT J. REEVES, ESQ., a member of the Bar of the Supreme Court of the United States, hereby certify that three true copies of the foregoing Brief for Petitioner for Writ of Certiorari were served on Respondent by mailing copies thereof in a duly addressed envelope to G. Walton Caire, Attorney for Defendant-Respondent, at P.O. Box 155, Edgard, Louisiana 70049, this 30th day of August, 1982.

I further certify that all parties required to be served have been served.

Abbott J. Reeves, Pro Se & S.

ABBOTT J. REEVES, ESQ.